IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 10TH NOVEMBER 2006 / 19TH KARTHIKA 1928

CRL.A.No. 2144 of 2006()

AGAINST THE ORDER IN MC 4/06 IN
SC.370/2004 of ADDL. SESSIONS COURT (ADHOC III) N.PARUR

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APPELLANTS:

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1. JAYAPRAKASAN, S/O.PADMANABHAN,
SANKARAYATH, ALAMTHURUTH KARA,
VADAKKEKARA VILLAGE.

2. DILEEP, S/O.VASUDEVAN,
VALIYAVEETTIL, VADAKKEKARA.

BY ADV. SRI.B.PREMOD

RESPONDENTS:

PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 10/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

CRL.A.NO.2144 of 2006

Dated this the 10th day of November, 2006

JUDGMENT

This appeal arises from an order passed by the Additional Sessions Judge under Section 446 of the Code of Criminal Procedure ('the Code', for short). The appellants are the sureties of the 6th accused in a sessions case. They executed a bond for Rs.20,000/- each for the appearance of the accused before the court. The accused did not appear before the court and there was no representation. Hence notices were issued to the sureties to produce the accused or show cause why the amount of Rs.20,000/- shall not be realised from them. The appellants did not appear before the court nor did they produce the accused, though they had accepted the notice. Hence the bond, according to the trial court, stood forfeited. The court also found that they did not offer any explanation for realising the bond amount from them. Therefore, they were ordered to pay Rs.20,000/- by way of penalty for forfeiture of the bail bond. The said order is under challenge.

2. A reading of the order under challenge will reveal that the court has not recorded the grounds of proof of satisfaction that the bond has been forfeited. The court entered a finding that the accused defaulted appearance in court without any representation, but did not record the "grounds of proof" of satisfaction that the bond is forfeited. This is in violation of the mandate under sub-section (1) of Section 446 of the Code.

3.It is also seen from the order under challenge that the court entered a finding that the appellants did not produce the accused and hence bail bond executed by them stood forfeited. The reason for forfeiture, according to the court below, was the failure to produce the accused in court. Therefore, on the same day, on finding that the bond stands forfeited, the court ordered to pay Rs.20,000/- by the appellants-sureties as penalty. This procedure is also in violation of the mandatory provision contained in Section

446 of the Code. The court can impose penalty only if the sureties or the person who commits breach of bond does not pay the penalty or show cause why penalty shall not be paid. But such an opportunity is not seen given by the trial court to the appellants even after recording that "the bond stands forfeited". Therefore, the order passed under Section 446 of the Code ordering to pay Rs.20,000/- as penalty is already illegal.

4. On considering the facts and circumstances of the case, however, I find that the case has to be remanded for fresh consideration and disposal in accordance with law. The order under challenge is, therefore, set aside. The trial court is directed to take the case on file and dispose of the same in accordance with law in strict compliance with Section 446 of the Code. The appellants shall appear before trial court on 22.1.2007.

The appeal is allowed.

K.HEMA, JUDGE

vgs.